

(2011) 04 KL CK 0095
In the High Court Of Kerala
Case No : W.A. No. 1831 of 2010

Mannady Service Co-operative Bank	Vs	APPELLANT
Krishna Kumar and Another		RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Citation : (2011) 2 ILR (Ker) 619 : (2011) 2 KLJ 748 : (2011) 2 KLJ 745

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : K. Ramakumar and D. Kishore, for the Appellant; P.N. Mohanan, for Respondent 1 and K.C. Santhosh Kumar, Govt. Pleader for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The connected Writ Appeals are filed against common judgment of the learned Single Judge allowing four writ petitions filed challenging the notification and follow up action taken by the Appellant-Bank for appointment of an Attender, a Salesman and one Peon in the Appellant-Bank. We have heard Senior counsel Sri K. Ramakumar appearing for the Appellant-Bank and counsel appearing for the contesting Respondents and the Government Pleader for the Joint Registrar of Co-operative Societies.

2. Of the four writ petitions filed, one was filed by none other than a member of the managing committee of the Appellant-Bank and one each by members of the Bank and the fourth one by an applicant who has applied for the post of Attender and Salesman. The allegations raised before the learned Single Judge were that the Bank was running on heavy loss and the accumulated loss as on the date of inviting application for the impugned appointments was Rs. 36 lakhs and, therefore, the justification for appointment itself was questioned by the members. The more serious allegation is that the President and few members of the managing committee have already selected candidates and the written examination and interview both fixed on the same day after inviting applications

through publication in two newspapers of limited circulation is a farce and the whole scheme and method adopted for appointment are illegal and against the norms applicable for selection. The learned Single Judge considered each and every allegation and found that all allegations are proved and accordingly he vacated the impugned notification and all follow up action taken for appointments. It is against this judgment, the Appellant has come up in appeal for justifying their action.

3. Before proceeding to consider the grounds raised in support of the Writ Appeal, we are constrained to take note of the fact that the Appellant-Bank on account of accumulation of losses and lack of business and deposits has lost two positions in grading in as much as, as on 4-1-2010 it is declared as a Class V Bank as against the status enjoyed as Class III Bank when appointments were proposed. The Government Pleader appearing for the Joint Registrar of Co-operative Societies submitted that under the classification of the Appellant-Bank as Class V, Appellant is not entitled under Rule 188 of the Co-operative Societies Rules to make appointment to the posts for which the impugned notification was issued. Since decline in business is the trend in Appellant-Bank in as much as in the course of two years it lost two positions in grade, it cannot make any appointments to non-existing posts because staff fixation is made based on grades of Banks under Rule 188 of the Co-operative Societies Rules and the Bank cannot violate the Rules and make appointments to non-existing posts. Even though this ground is very relevant to justify the judgment of the learned Single Judge, we feel the appeals on merit have to be considered on other grounds also found against the Appellant by the learned Single Judge. We, therefore, proceed to consider the grounds of appeals raised by the Appellant.

4. The first ground raised by the learned Senior Counsel appearing for the Appellant is that this Court should not have entertained the writ petitions challenging the notification inviting applications and the follow-up proceedings for appointment for the reason that dispute should have been settled through Arbitration u/s 69 of the Act. Counsel specifically brought to our notice that out of the four writ petitions, one is filed by a member of the managing committee of the Appellant-Bank and two by members of the Bank and so much so, dispute should have been settled in Arbitration. However, admittedly one of the writ petitions which is also allowed by the learned Single Judge along with other cases is filed by an applicant for the post challenging the whole proceedings as mala fide and against the Rules. The learned Single Judge in fact found all allegations in the writ petitions are true and, therefore, we do not find any merit in the contention raised by the learned Counsel against the jurisdiction of this Court to entertain the writ petitions. Admittedly Co-operative Banks are constituted according to the provisions of the Co-operative Societies Act and Rules and they have to function in accordance with the statutory provisions and the orders issued by the Registrar thereunder. If the action taken by the Society is in violation of the statutory provisions and against the binding orders issued by the Registrar of Co-operative Societies, then parties can always redress

grievance by approaching this Court instead of each and every one going to different forums to settle a common grievance. In any case since one of the writ petitions is filed by an aspirant and applicant for the post notified by the Appellant-Bank, atleast the said writ petition is maintainable and when the same is allowed by the learned Single Judge on merits, the Appellant's remedy is only to challenge the judgment of the learned Single Judge on merits in Writ Appeal. We have to, therefore, only consider the Writ Appeal on merits.

5. Admittedly appointments could be made by the Appellant-Bank by following the procedure prescribed by the Registrar of Co-operative Societies in the Circular issued by him in exercise of statutory powers. Sections 80(3)(a) and 80 B of the Co-operative Societies Act makes it clear that the managing committee should appoint persons by making selection through the conduct of written examination and interview as per the guidelines issued by the Registrar of Co-operative Societies Act. The major procedural requirements for the selection of candidates in terms of Circular issued by the Registrar are that:

- (1) Application for the post shall be invited through advertisement in leading dailies having wide circulation in the area;
- (2) Written test shall be conducted by an outside agency;
- (3) False numbers should be assigned to the answer scripts.

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6. The learned Single Judge found that the publication inviting applications was made only in two newspapers, one of which is a paper run by the Marxist Party the members of which constitute majority of managing committee of the Appellant-Bank and the other newspaper is also a Malayalam Daily with limited circulation. The learned Single Judge found that the Appellant-Bank never intended wide circulation of the selection for appointments and that is the reason why publication was not made in two major Malayalam newspapers with wide circulation. Even though learned Counsel for the Appellant controverted this position and submitted that the two newspapers in which publications were made were leading dailies having wide circulation in the area, we do not think there is any need for us to decide the issue because from the total number of applications received itself it is clear that large number of aspirants were not aware of the selection for appointments. The Appellant-Bank is located in a District which has large number of unemployed educated people and most of the Keralites wish to get employment in the organised sector. In our view, the limited number of applications received i.e. 42, itself is intrinsic evidence of lack of publicity for the notification inviting applicants which is a violation of guideline issued by the Registrar of Co-operative Societies. Therefore, what is to be inferred is that the newspapers which published the advertisements did not have wide circulation in the area.

7. The learned Single Judge considered in detail the Appellant's claim that outside agency was engaged for the conduct of test. The findings are that the claim is absolutely bogus because there is no such agency as claimed by the Appellant, existing as a Corporate Body and the persons brought by the Appellant are only retired employees of Co-operative Departments who are not organised under any organisation. Further, the question cum answer papers contained only the seal of the Appellant-Bank and not of the so-called agency which conducted the test. The more interesting finding of the learned Single Judge is that written examination and interview were fixed on the same date one after the other which is probably a unique feature of this case. In the normal course, answer books with false numbers are valued by the outside agency and on getting the rank list, the Bank constitute an Interview Board for conducting the interview. The fixation of written examination followed by interview on the same day clearly support the apprehension of the writ Petitioners that selections probably would be already made and the test and interview are only a farce or apparent compliance of the Rules in regard to selection. We do not want to repeat the entire details and grounds based on which the learned Single Judge rejected the claim of engaging outside agency by the Appellant because we completely endorse the detailed findings of the learned Single Judge in regard to irregularities committed in the selection process. The conclusion that the entire selection process is unfair and against the guidelines issued by the Registrar of Co-operative Societies is irresistible. We, therefore, confirm all the findings of the learned Single Judge and consequently dismiss the Writ Appeals.

8. Before parting with the matter we feel that since the Appellant-Bank is now classified in the category of Grade V Bank under Rule 188, it can make appointments only for the posts sanctioned to it under the Rules. Therefore, there will be direction to the Appellant-Bank to take clearance from the Joint Registrar of Co-operative Societies on the entitlement of staff strength before making selection for any post.